IN THE SUPREME COURT OF MISSOURI

COALITION OF GRADUATE WORKERS, *et al.*,	)	
	)	SC _____
Plaintiff-Respondents,	)	
	)	WD81978
vs.	)	
	)	
THE CURATORS OF THE UNIVERSITY OF MISSOURI,	)	
	)	
Defendant-Appellant.	)	

APPLICATION FOR TRANSFER

The Court should transfer this appeal because it raises at least these questions of general interest and importance regarding Art. I, § 29 of the Missouri Constitution:

1. Whether § 29 treats persons who receive monetary benefits in connection with a training and education program the same as persons whose employment is not part of such a program.
2. To what degree did the people of Missouri in § 29, as held in *Independence National Education Association v. Independence School Dist.*, 223 SW 3d 131 (Mo. 2007), choose in 1945 to have Missouri chart its own constitutional course in labor law, separate and perhaps dramatically different from the labor law concepts with which those voters were then familiar? This issue may involve reconsideration of dicta in or even the holding of *Independence NEA*.

BACKGROUND

This appeal arose from a dispute between the University of Missouri and a labor organization, the Coalition of Graduate Workers. The Coalition seeks to bargain for graduate students at the University of Missouri's Columbia campus who perform work and receive stipends as part of their graduate degree programs. That group, called "Graduate Workers" below, consists of a constantly changing set of students who are at various times assigned teaching and non-teaching tasks (*e.g.*, research)—tasks directly related to their graduate programs. Their work is supervised, directly or indirectly, by the professors with whom the students are studying.

The Coalition proposed to ask all graduate students receiving stipends to make the Coalition the exclusive bargaining representative for the entire group, citing Art. I, § 29. But whether such students are "employees" under § 29 and are thus entitled "to organize and to bargain collectively through representatives of their own choosing" was, until the proceedings here, an open question under Missouri law. And applying federal law, the National Labor Relations Board has at various times answered it in different ways. Slip op. at 7-8. Unless and until the question was answered directly under Missouri law, the University declined to engage with the Coalition of Graduate Workers to conduct a representation election for the single bargaining unit that the Coalition sought, *i.e.*, a unit consisting of all Graduate Workers.

Without the involvement of the University, the Coalition proceeded to conduct its own election. It persuaded the circuit court to declare that Graduate Workers are "employees" as that term is used in § 29—answering the novel question. Then, because a majority of the minority of Graduate Workers who actually voted chose to have the Coalition represent them, the

circuit court ruled that the University was bound to recognize the Coalition as the exclusive representative for all graduate students receiving stipends.

The University appealed. The Court of Appeals ruled in favor of the Coalition and against the appellant Curators as to the "employee" question. It ruled against the Coalition as to the election that the Coalition held unilaterally, and "remanded for further proceedings." Slip op. at 13.

REASONS TO TRANSFER

Granting transfer in this appeal would serve at least two purposes, interest in which extends well beyond these parties and this set of facts.

1. To answer the question whether "employee," as used in Art. I, § 29, covers those receiving monetary benefits even if the primary purpose of their work is academic (or professional or vocational) development.

In *Independence NEA*, this Court announced that instead of looking at the common understanding created by contemporary federal law (*see* (2) below), interpretation and application of § 29 would be based on a plain language reading of the words of the section. That led to the conclusion that public school teachers were "employees"—*i.e.*, persons with "the right to organize and to bargain collectively through representatives of their own choosing."

This Court has had few opportunities to address the definition of "employee" beyond *Independence NEA*. And, so far as we know, it has been presented no instance in which to tackle any variation on the question whether, for any person whose primary purpose for accepting work assignments is academic, professional, or vocational, receipt of a monetary benefit is itself enough to make that person an "employee" under § 29.

Like "residents, interns, and fellows," Graduate Workers are "primarily students." *See N.L.R.B. v. Committee of Interns and Residents*, 566 F.2d 810, 813 (2d Cr. 1977). Graduate students perform work in their particular academic departments not primarily for the money and benefits, but to gain the skills, acquire the experience, amass the record of achievement, and develop the relationships necessary to be successful in their chosen fields. Their relationship with their academic supervisors is not a typical employer-employee relationship. It is, in many instances at least, a mentor-mentee relationship—one that is critical to success in beginning an academic career.

The Court of Appeals gave academic relationships and the primary purpose of work assignments and stipends no significance at all, concluding that if the University is going to pay graduate students—a step required, for many students, to make graduate study feasible—it must treat them as "employees" for constitutional purposes.

Whether primarily working for professional academic development is enough to separate the graduate students who are at any given time receiving a stipend and being assigned work, on the one hand, from teachers and other school district personnel (*i.e.*, those addressed in *Independence NEA*) on the other, is an important question. And the answer will assist not only those operating in the graduate arena, but those paid or paying stipends in connection with more widely available non-academic professional or vocational development relationships: internships and apprenticeships with public officials and entities.

2. To clarify the relation between Missouri and federal law—present or past.

Until *Independence NEA*, concepts found in federal labor law at the time Art. I, § 29 was enacted were imported into Missouri labor law as embodied in § 29. That case presented a significant (but not unique) example: from 1947 until 2007, this Court's precedent held that the understanding of "employee" that was common in 1945—an understanding that excluded public employees—was to be applied to the Missouri constitution. *See Independence NEA*, 223 SW 3d at 135, discussing *City of Springfield v. Clouse*, 206 S.W.2d 539 (Mo. 1947) (described as having "held that article I, section 29 does not apply to public employees").

The pre-*Independence NEA* understanding of § 29 was based on the then-contemporaneous understanding of the right to collective bargaining under federal law. In *Independence NEA*, the court rejected that interpretive approach. It turned instead to a "plain language" reading of § 29. But we do not know how far that turn goes—how far the new precedent separates § 29 from the labor law concepts that were embodied in federal law (and thus in the public mind) in 1945. This case presents an opportunity to clarify the limits, if any, on the State's departure from those dominant federal concepts—*i.e.*, the degree to which the people in 1945 intended that Missouri chart its own course, separate and perhaps dramatically different from the labor law concepts with which the voters were then familiar.

In the alternative, this case gives the Court an opportunity to revisit the divorce itself—to reconsider whether federal labor law concepts *are* to be imported into Missouri constitutional law, given that they are the concepts that gave meaning to the voters in 1945. That would lead the Court to reconsider the *Independence NEA* holding.

Such reconsideration is appropriate in light of our courts' otherwise express willingness to follow federal precedent where state and federal law addresses the same rights. *See*, *e.g.*, *State v. Douglass*, 544 S.W.3d 182, 198 (Mo., 2018) (citing U.S. Const. amend. IV, then stating, "Article I, section 15 of the Missouri Constitution provides coextensive protection against unreasonable searches and seizures."; *State v. Schaal*, 806 S.W.2d 659, 662 (Mo. banc 1991) ("The confrontation rights protected by the Missouri Constitution are the same as those protected by the Sixth Amendment of the United States Constitution."), quoted with approval, *State v. Justus*, 205 S.W.3d 872, 878 (Mo., 2006); *In re Interest of J.T.*, 447 S.W.3d 212 (Mo. App., 2014) ("Because the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and Article I, Section 10 of the Missouri Constitution provide the same protections, our analysis is the same.").

CONCLUSION

For the reasons stated above, the Court should grant the application and transfer the appeal pursuant to Art. V, § 10.

Respectfully submitted,

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PROOF OF NOTICE AND CERTIFICATE OF SERVICE

I hereby certify that the Notice of Filing of the Application for Transfer and copies of the Form 15 cover page, this Application of Transfer, the opinion of the Court of Appeals, the Motion for Rehearing or Application for Transfer filed in the Court of Appeals, and the notice denying that Motion and Application were filed through the e-filing system and served by email this 11th day of September, 2019.

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